In the High Court of Punjab and Haryana at Chandigarh.

Regular Second Appeal No.4313 of 2004.

Date of decision:21.11.2006.

Des Raj and others.

...Appellants.

Versus

Baru Ram

...Respondent.

...

Coram: Hon'ble Mr.Justice S. N.Aggarwal.

...

Present: Mr.A.K.Tyagi Advocate for the appellants.

Mr.Sanjiv Gupta Advocate for the respondent.

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Judgment

S. N. Aggarwal, J.

This judgment shall dispose of Regular Second Appeal No.4313 of 2004 (Des Raj and others Versus Baru Ram) and Regular Second Appeal No.4314 of 2004 (Kartaro Devi and others Versus Baru Ram) as common questions of law and facts are involved in both these appeals. Facts are, however, taken from Regular Second Appeal No.4313 of 2004.

Smt. Surti was the owner of the suit land. She had two brothers namely Jamadar Singh and Bhartu. She suffered a decree in

favour of his brother Bhartu (predecessor-in-interest of the appellants) on 24.1.1985. She also suffered a decree in favour of her nephew Baru Ram, respondent No.1 (son of Jamadar Singh) on 18.7.1985.

The appellants filed a civil suit for declaration that the judgment and decree dated 18.7.1985 in favour of Baru Ram were illegal. Baru Ram also filed a civil suit against the present appellants for declaration that he was owner in possession on the basis of judgment and decree dated 18.7.1985 and that the judgment and decree dated 24.1.1985 in favour of the appellants were illegal. Both the civil suits were consolidated by the learned trial Court. The learned trial Court held that the judgment and decree dated 24.1.1985 were valid qua 1/2 share of the suit land and these were bad, wrong and illegal qua the remaining half and and set aside the same. The mutation on the basis of this judgment and decree was also set aside to that extent. The judgment and decree dated 18.7.1985 were accordingly upheld. Accordingly, the learned trial Court decided the civil suits vide judgment and decree dated 16.1.2004.

The appellants filed two appeals. The learned Lower Appellate Court dismissed both the appeals vide judgment and decree dated 21.7.2004.

Hence, the present appeals.

The submission of the learned counsel for the appellants was that since the judgment and decree dated 24.1.1985 were prior in time ,therefore, no land was left with Smt.Surti for suffering a decree in

favour of Baru Ram, respondent on 18.7.1985. Hence, it was prayed that the judgments passed by the Courts below be set aside and the appeals be accepted.

Considered.

The learned counsel for Baru Ram respondent made reference to the statement of Smt. Surti dated 19.10.1984 on the basis of which judgment and decree dated 24.1.1985 were passed. A copy of this statement proved in the learned trial Court is Exhibit P-3. As per this statement of Smt.Surti, she had given half share of her land to her brother Bhartu (predecessor-in-interest of the appellants) and the same was accepted by the statement made by the counsel for Bhartu on 19.10.1984. Therefore, as per settlement between the parties and their statements recorded in the said civil suit, Smt. Surti had given half share of her property to Bhartu, predecessor in interest of the appellants. However, the judgment and decree dated 24.1.1985 were wrongly passed for the entire property of Smt.Surti which was not in accordance with the statements made by both the parties in the said civil suit. The learned Courts below were,therefore,justified to up-hold the judgment and decree dated 24.1.1985 to the extent of half share of the land owned by Smt.Surti and to hold the judgment and decree dated 24.1.1985 illegal qua the remaining half.

It appears that even Bhartu was asserting his ownership on the entire land of Smt.Surti on the basis of judgment and decree dated 24.1.1985 and was interfering in the peaceful possession of Baru Ram

respondent on the remaining half. Then the village panchayat intervened and a compromise had taken place between Bhartu (predecessor in interest of the appellants) and Baru Ram respondent on 5.5.1987 before the panchayat. Its copy was proved on the file of the learned trial Court as Exhibit P-1. In this compromise, Bhartu (predecessor in interest of the appellants) had also admitted the correctness of the judgment and decree dated 18.7.1985 suffered by Smt. Surti in favour of Baru Ram respondent. He had also specifically admitted that Baru Ram was the owner in possession of the land measuring 10 Kanals 13 Marlas on the basis of judgment and decree dated 18.7.1985. He had undertaken in the panchayat that he would not assert his rights over that part of the land in future.

This compromise writing before the village respectables also shows that the judgment and decree dated 18.7.1985 for the land measuring 10 Kanals 13 Marlas in favour of Baru Ram were legal and valid.

Concurrent findings of facts have been recorded by the learned Courts below to the same effect. There is no ground to interfere in the judgments of the Courts below.

No substantial question of law arises.

There is no merit in the present appeal and the same is dismissed.

November 21,2006. (S. N. Aggarwal)
Jaggi Judge